Supreme Court, U.S.
FILED

961192 OCT 30 1996

OFFICE OF THE CLERK

NO. _____

In The
Supreme Court of the United States
October Term, 1996

OLGA CHAPA FALCON,
Petitioner

V.

THE UNITED STATES OF AMERICA,
Respondent

Petition For Writ Of Certiorari
To The United States Court
Of Appeals For The Fifth Circuit

Petition For Writ Of Certiorari

Robert J. Kuhn
Kuhn, Doyle & Kuhn, P.C.
603 West Eighth Street
Austin, Texas 78701
(512) 472-7241
FAX (512) 472-1422

32pp

QUESTION PRESENTED FOR REVIEW

Whether testimony regarding a prior alleged offense for which a defendant was never convicted in state court may be properly admitted in a subsequent Federal trial under the exceptions contained in Federal Rule of Evidence 404(b).

LIST OF ALL PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Fifth Circuit.

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Olga Chapa Falcon, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on August 1, 1996.

OPINIONS BELOW

The August 1, 1996 opinion of the Court of Appeals, whose judgment is herein sought to be reviewed, was unpublished pursuant to Local Rule 47.5 of the Fifth Circuit. The case number in the Court of Appeals is 95-50285, and the opinion is reprinted in the separate Appendix to this Petition, Appendix A. The prior opinion of the United States District Court for the Western District of Texas, No. A-93-CR-100, is unpublished.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on August 1, 1996. Petitioner's Motion to Extend Time to file this application was denied by Mr. Justice Scalia on October 11, 1996. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Federal Rules of Evidence (hereinafter "FRE") 404 and 403, the texts of which are set forth in the Appendix to this Petition, Appendix B.

STATEMENT OF THE CASE

This is a drug conspiracy case in which the Government sought to prove that petitioner conspired to possess with intent to distribute cocaine between 1988 and 1993. In order to extend and anchor the time period to 1988, the Government offered, and the trial court admitted, evidence of an extrinsic possession of marijuana offense that is alleged to have occurred in Missouri in 1988.

The Government proffered the testimony of Officer Michael Cooper of the Missouri Highway Patrol, who testified that on May 11, 1988, he stopped a motorhome in which petitioner was a passenger. The officer testified that, upon a search of the vehicle, he found 2.975 pounds of marijuana and $94,224.00 in cash in a pair of women's pants. Defense counsel objected to testimony regarding marijuana and the money based on FRE 404(b), and the trial court overruled the motion. The officer further testified regarding the driver of the vehicle and another passenger, about invoices and other documents the officer had found indicating their travels to and from the Detroit, Michigan area, as well as about an alleged drug ledger possessed by the other passenger.

The bulk of the evidence and testimony offered by the Government against petitioner involved alleged communications among petitioner, a co-defendant, an undercover FBI agent, and a confidential informant. Such alleged communications took place in the middle of 1992, largely related to cocaine (although some discussion of heroin and marijuana was alleged to have occurred) and centered entirely around the Austin, Texas area.

The Government argued, and the trial and appellate courts implicitly accepted the argument, that the testimony regarding the Missouri stop was not extrinsic evidence, and therefore not covered by FRE 404(b). It argues that the indictment covers the years 1988-1993, and that testimony regarding the Missouri stop was introduced as part and parcel of the indicted conspiracy. The Government sought to prove that petitioner was the hub of a wide-ranging, conspiratorial drug enterprise, and the Missouri stop was an integral part of that. The Government emphasized this point in its opening, case-in-chief, and closing.

Petitioner, however, was acquitted of any offense related to the Missouri stop, as the docket sheet attached as Appendix "C" hereto shows. Any alleged offense connected with the Missouri stop was not merely uncharged acts with unnamed co-conspirators. A trier of fact had determined that no

guilty drug activity by petitioner had occurred.

Petitioner was convicted by a jury of the offenses of Conspiracy to Possess with the Intent to Distribute Cocaine [21 U.S.C. §§ 841(a)(1) and 846] and Use of a Communication Device to Facilitate the Commission of a Felony [21 U.S.C. §§ 841(a)(1) and 842(b)]. Punishment was assessed at 288 months confinement on the conspiracy count and 48 months on the phone count, to run concurrently, along with a $25,000 fine and five years of supervised release.

Petitioner appealed her conviction to the United States Court of Appeals for the Fifth Circuit, which affirmed her conviction on all counts on August 1, 1996. The Court of Appeals, in holding that the trial court did not abuse its discretion in admitted testimony regarding the Missouri stop, cited United States v. Fortenberry, 919 F.2d 923, 925 (5th Cir. 1990), cert. denied, 499 U.S. 930 (1991). Fortenberry held that the trial court's admission of a list which contained information allegedly designed to show prior misconduct of the defendant, though arguably more prejudicial than probative, was not reversible error because it did not affect Fortenberry's substantial rights. The rationale underlying this conclusion was that the list comprised only a small part of the Government's evidence against Fortenberry, and therefore any potentially prejudicial effect the list might have had was diminished to the point of harmless error. Fortenberry, 919 F.2d at 925.

REASONS FOR GRANTING THE WRIT

The judgment of the United States Court of Appeals for the Fifth Circuit should be reviewed by this Court. A district court's decision to admit evidence is reviewed under the abuse of discretion standard. U.S. v. Davis, 19 F.3d 166, 171 (5th Cir. 1994). Because of the special nature of conspiracy cases, it is unclear how FRE 404(b) should apply, if at all, in such cases. The government, in its reply brief to the Fifth Circuit, argues that testimony regarding any offense, charged or uncharged, acquitted or convicted, is admissible and outside

the scope of 404(b) as long as it falls within the time period specified in the conspiracy indictment and is presented to the trial court as "part and parcel" of the charged conspiracy.

To the contrary, other U.S. courts of appeals have held that an act must be sufficiently similar in kind and reasonably close in time to be considered "intertwined" with the charged conspiracy. See U.S. v. Severe, 29 F.3d 444, 447 (8th Cir. 1994). In that case, the prior bad act which the court ruled was part and parcel of the charged conspiracy involved a named co-conspirator, the act occurred near the end of the charged time period, and involved the same type of activity (delivery of cocaine base) that Severe was charged with in the indictment.

In the instant case, petitioner was charged with conspiracy to possess cocaine with intent to distribute. Almost all of the communications alleged to have furthered the conspiracy took place in Austin, Texas beginning in the summer of 1992, and took place among a small, named group of persons.

The Missouri stop took place four years prior to the communications which made up the bulk of the Government's case, involved marijuana rather than cocaine, took place in Missouri (en route from Michigan), and involved individuals unnamed in the indictment, and who had no connection to the 1992 communications.

The trial court in the instant case did not make a determination of whether testimony regarding the 1988 Missouri stop was evidence of an extrinsic act (and therefore subject to the four-part Huddleston test, see Huddleston v. U.S., 485 U.S. 681, 685 (1988)) or was part and parcel of the conspiracy itself. The court merely accepted the Government's assertion that because the Missouri stop was within the time frame charged in the indictment, the Missouri stop was not extrinsic bad act evidence, and therefore not subject to FRE 404(b).

Because of the proliferation of drug conspiracy cases in recent years, int is essential that this Court provide guidance to Federal District Courts as to whether FRE 404(b) applies at all in such cases. The Court of Appeals in petitioner's

case has essentially ruled that it does not. Petitioner would argue that a district court, in conspiracy cases, should undertake an analysis similar to that it undertakes in admitting or excluding prior bad acts under FRE 404(b).

Upon proper objection by the defense (as there was in this case) a court should question whether a bad act alleged to be part and parcel of a charged conspiracy was sufficiently close in time and manner to the other acts charged in the conspiracy, and whether there is sufficient evidence to support a jury finding that the defendant committed the act in question. See U.S. v. Shedlock, 62 F.3d 214, 218 (8th Cir. 1995).

There is nothing in the record to indicate that the district court made such an analysis. If it had, petitioner would argue that it would not have admitted testimony regarding the 1988 Missouri stop. Not only was the stop, as argued above, insufficiently close in time and manner to the other acts charged in the conspiracy, but, based on the acquittal in the Missouri case (see Appendix "C" attached hereto), there was clearly not enough evidence to support a jury finding that the petitioner committed the acts in question.

In citing Fortenberry, the Court of Appeals seems to hold that any potentially prejudicial effect the admission of testimony regarding the Missouri stop may have had was minimized to the point of harmless error because the other evidence against petitioner was so overwhelming.

Other circuits, however, have held quite the opposite. In U.S. v. Dolliole, 597 F.2d 102, 106-108 (7th Cir. 1979), cert. denied 442 U.S. 946, the Seventh Circuit held that when the Government has ample evidence to establish an element of a crime (i.e. intent or motive in the instant case), the probative value of prior crime evidence is greatly reduced and the risk of prejudice which accompanies such evidence will not be justified. Dolliole, 597 F.2d at 106. Further, the Dolliole court undertook a FRE 403 balance analysis, and conditioned the admission of prior crime evidence on "clear and convincing" evidence that the crime had occurred. The trial court in

petitioner's case did not consider either of these question because it accepted there Government's assertion that the Missouri stop was intertwined with the charged conspiracy.

The First Circuit has likewise held that a trial court must undertake a bifurcated inquiry before admitting evidence of prior bad acts. First, the court must determine that the acts have special probative value (see, e.g. FRE 404(b)); second, the court must undertake a FRE 403 probative/prejudicial balance analysis. If the extrinsic bad act evidence brings in "unwanted baggage," i.e is so cumulative or confusing to the jury that the probative value is minimized, the evidence should be excluded. U.S. v. Rodriguez-Estrada, 877 F.2d 153 (1st Cir. 1989).

The court in petitioner's case undertook no FRE 403 inquiry, provided no limiting instruction regarding the Missouri stop (aside from the general instruction that petitioner was not on trial for any act not alleged in the indictment), and did not question whether the stop was properly "part and parcel" of the charged conspiracy.

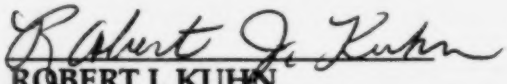
Petitioner's argument is simply this: this Court should require district courts to undertake an analysis analogous to the FRE 404(b) analysis in deciding whether an act alleged to be "intertwined" with other acts is actually part of a charged conspiracy, or if it is more properly characterized as extrinsic bad act evidence subject to the strictures of FRE 404(b).

Had the court in petitioner's case undertaken such an analysis, it most likely would have found that, due to the time lag, disparate circumstances, and lack of sufficient evidence to support a jury finding that petitioner committed the acts (see Appendix "C" attached hereto), testimony regarding the Missouri stop was both an extrinsic bad act, and inadmissible as such.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that her petition for a writ of certiorari be granted.

Respectfully submitted,



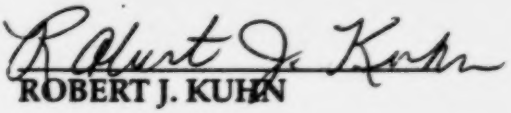
ROBERT J. KUHN

KUHN, DOYLE & KUHN, P.C.
603 WEST EIGHTH ST.
AUSTIN, TEXAS 78701
512-472-7241
FAX 512-472-1422

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petition for Writ of Certiorari was mailed by regular U.S. Mail pursuant to Supreme Court Rule 29.2 to the Solicitor General of the United States, Room 5614, Department of Justice, 10th St. and Constitution Ave., N.W., Washington, DC 20530 on this 30th day of October, 1996.



ROBERT J. KUHN

APPENDIX A

JUDGMENT OF COURT OF APPEALS AND OPINIONS BELOW

AO245 S(Rev. 4/10)(W.D.Tx.rev)Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Western District of Texas **FILED**
APR 17 10:21 AM'95
U.S. DISTRICT COURT
BY s/TC DEPUTY

UNITED STATES OF AMERICA

v. Case Number: A-93-CR-110(2)JRN
USAO Number: 93-02803

OLGA CHAPA FALCON
Aliases: Maria Helene Elizondo
Defendant

]

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, **OLGA CHAPA FALCON**, was represented by Roger Joyner.

The defendant was found guilty on counts 1 and 2 of the indictment by a jury verdict on January 19, 1995, after a pleas of not guilty. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Name of Offense	Date of Offense	Count Number(s)
CONTRARY TO 21:841 (a) (1), IN VIOLATION OF 21:846	CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE COCAINE.	03/2/93	1

Title & Section	Name of Offense	Date of Offense	Count Number(s)
CONTRARY TO 21:841 (a) (1), IN VIOLATION OF 21:843 (B)	USE OF COMMUNICATION DEVICE TO FACILITATE THE COMMISSION OF A FELONY.	06/04/94	2

As pronounced on **APRIL 13, 1995**, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a total special assessment of $100.00, for counts 1 and 2 of the indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, United States District Court.

It is further ordered that the defendant shall notify the United States Attorney for the district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 13th day of April, 1995.

"s/JAMES R. NOWLIN"
UNITED STATES DISTRICT JUDGE

Defendant's SSN: 455-68-6652
Defendant's Date of Birth: 11/03/44
Defendant's address: c/o HAYS COUNTY JAIL, 1307 Old Uhland Road, San Marcos, TX 78666
Defendant's address: 110 Red Oak Creek Drive, Oakcliff, TX

AO 245 S(Rev. 4/91)(W.D.Tx.rev)Sheet 2 - Imprisonment
Judgment

Defendant: OLGA CHAPA FALCON
Case Number: A-93-CR-110(2)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **TWO HUNDRED AND EIGHTY-EIGHT (288) MONTHS.**

Count 1 - 288 Months
Count 2 - 48 Months

IT IS FURTHER ORDERED that the period of imprisonment imposed on Count 2 shall run CONCURRENTLY to the period of imprisonment imposed in Count 1.

The defendant is CONTINUED in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to_____
at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

AO 245 S(Rev. 10/90)(W.D.Tx.rev)Sheet 3 - Supervised Release

Judgment

Defendant: OLGA CHAPA FALCON
Case Number: A-93-CR-110(2)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **FIVE (5) YEARS.**

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

x If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

x If the judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

x The defendant shall not own or possess a firearm or destructive device.

x The defendant shall provide the United States Probation Office with access to access to any requested financial information or documents.

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STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4) The defendant shall support his or her dependents and meet other family responsibilities.
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6) The defendant shall notify the probation officer with seventy-two hours of any change in residence or employment.
7) The defendant shall refrain from excessive use of alcohol and shall not purchase, posses, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
9) The defendant shall not associate with any person engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent or law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245 S(Rev. 4/91)(W.D.Tx.rev)Sheet 5 - Fine Judgment

Defendant: OLGA CHAPA FALCON
Case Number: A-93-CR-110(2)

FINE

The defendant shall pay a fine of $25,000.00. This fine includes any costs of incarceration and supervision.

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the **interest** requirement is **waived.**

This fine shall be paid to the Clerk, United States District Court.

The fine shall be paid immediately. If the defendant is now unable to pay this indebtedness, he shall cooperate fully with the office of the United States Attorney and/or the United States Probation Office to make payment in full as soon as possible. Any unpaid balance at the commencement of a term of supervised release may be paid on a schedule of monthly installments to be approved by the Court and becomes a condition of supervision.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. 3614.

AO 245 S(Rev. 4/91)(W.D.Tx.rev) Sheet 7 - Statement of Reasons

Judgment

Defendant: OLGA CHAPA FALCON
Case Number: A-93-CR-110(2)

STATEMENT OF REASONS

This Court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	38
Criminal History Category:	1
Imprisonment Range:	235 months to 293 months
Supervised Release Range:	5 years
Fine Range:	$25,000 to $4,000,000
Restitution:	$N/A

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed due to the seriousness of the offense.

A-10

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
AUG 01 1996
CHARLES R. FULBRUGE III, CLERK

No. 95-50285
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OLGA CHAPA FALCON,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-93-CR-100

Before HIGGINBOTHAM, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Olga Chapa Falcon appeals her jury conviction for conspiracy to possess cocaine with intent to distribute and using a telephone to facilitate a felony, complaining of insufficiency of the evidence and an evidentiary ruling. Our review of the record and the arguments and authorities

---

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limit circumstances set forth in Local Rule 47.5.4.

convince us that no reversible error was committed. The evidence was not insufficient. See United States v. Maltos, 985 F.2d 743, 746 (5th Cir. 1992) (drug conspiracy); United States v. Gonzales-Rodriguez, 966 F.2d at

918, 921 (5th Cir. 1992) (telephone charge). The district court did not abuse its discretion in admitting the challenged testimony. United States v. Fortenberry, 919 F.2d 923, 925 (5th Cir. 1990), cert. denied, 499 U.S. 930 (1991).

AFFIRMED.

A-12

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III **TEL. 504-589-6514**
CLERK **600 CAMP STREET**
NEW ORLEANS, LA 70130

August 1, 1996

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW
Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 95-50285 USA v. Falcon
USDC No. A-93-CR-110

Enclosed is a copy of the court's decision and judgment has been entered under FRAP 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FRAPs 39 through 41, and Local Rules (LR) 35, 39, and 41 govern costs, rehearings, and mandate. **New LR's 35.2.10 and 40 require that a copy of the opinion or order sought to be reviewed shall be bound with the petition for rehearing or suggestion for rehearing en banc as an appendix but shall not be marked or annotated.** Please red carefully the Internal Operating Procedures (IOP's) following FRAP 40 and LR 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if a nonmeritorious suggestion for en banc is made.

Direct Criminal Appeals. LR 41 provides that a motion for a stay of mandate under FRAP 41 shall not be granted simply upon request. The petition must set forth good cause for a

stay or clearly demonstrate a substantial question is to be presented to the Supreme Court. Otherwise, the motion may be denied and the mandate issued immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and will be considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay or mandate under FRAP 41. The issuance of the mandate does not affect the time, or your right, to file such a petition.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: s/Deborah Taylor, Deputy Clerk

Enclosure
Mr Richard L Durbin Jr
Ms Margaret Feuille Leachman
Mr Roger Fred Joyner
Mr John H Hagler

APPENDIX B
CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES, AND REGULATIONS

Federal Rule of Evidence 404: Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. Evidence of the character of a witness, as provided in rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Federal Rule of Evidence 403: Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

APPENDIX C
OTHER MATERIAL ESSENTIAL TO PETITION:

C-2

Docket Sheet: Missouri v. Olga Chapa Falcon

Sep 18 1996

DOCKET SHEET

Form A-653 REV. 11-85 CR488-525F

CASE NUMBER

IN THE CIRCUIT COURT OF COUNTY DIVISION

TRIAL JUDGE DATE FILED

STATE OF MISSOURI Judge Moore 5-11-88

ATTORNEY(S) PLAINTIFF(S)

Plaintiff(s)

VS.

FALCON, OLGA CHAPA

ATTORNEY(S) FOR DEFENDANT(S)

Darrell Deputy
Robert J. Kuhn

Defendant(s)

NATURE OF ACTION / CHARGE(S) TRIAL DATE: CONTINUED TO:

POSS. OF MARI-HUANA MORE THAN 35 GRAMS

CONTINUED TO: CONTINUED TO:

DATE	DOCUMENTS FILED/ACTION TAKEN IN CASE
5-11-88	Complaint filed s/kf
5-11-88	warrant issued s/kf $10,000 s/pm
5/12/88	Case called. Defendant appears for arraignment. Prosecutor does not appear. Defendant is arraigned, advised of right of counsel, trial, examination of witnesses. Cause set for appearance with Counsel on 5/16/88 @1:30 (GT) s/JRM
5/12/88	P.A. notified. s/GT
5/12/88	Warrant returned Served. s/GT
5/17/88	Bond $10,000 Cash Rec.#1227. Court Date 5/23/88 @1:30. s/GT
5/23/88	Deputy enters appearance co/counsel with Robert J. Kuhn. Case set for Preliminary Hearing on 6/28/88 @9:00. Atty's notified in Court. s/GT
5/24/88	Atty Darrell Deputy files entry of appearance. s/GT
5/27/88	Information Card filed. s/GT
6/28/88	Prosecutor states he is not prepared for hearing and requests additional time to conduct discovery. Request granted. Set 8/24/88 @ 9. Disposition or Dismissal. Both attorneys notified. s/JRM
8/24/88	Defendant appears with counsel - Kuhn assistant Prosecutor states witness. Cooper is not available requests a continuance. Granted - Cause set for Prelim Hearing or Dismissal 9-22-88 @1:30 p.m. All parties notified. s/JRM
9/20/88	Atty. Darrell Deputy files Request for Continuance and Waiver of Statutory time. s/GT
9/22/88	Defendant requests continuance - granted - setcause for Prelim Hearing on 10/20/88 @9:00 a.m.
10/17/88	Case cont. to 11/29/88 @9:00 by agreement of parties. s/GT
11-29-88	D.A. does not have witness - requests continuance. One last continuance granted cause will be heard or dismissed 1-12-89 @9:00.

JUDGE'S DOCKET CONTINUATION PAGE

Style of Case

Falcon, Olga

Page No.

Case Number
CR488-525F

DATE	DOCUMENTS FILED/ACTION TAKEN IN CASE
12/21/88	copies of Subpoena's to Trooper Cooper, and CPL Tucker. s/GT
12/27/88	Subpoena served to Trooper Cooper. s/GT
12/28/88	Subpoena served to CPL Tucker. s/GT
1-12-89	Def. does not appear. Def. att'y Deputy. Requests for Cont. to 2-9-89 @1:30 p.m. Produce evidence or dismiss. s/JMR Aπ & AΔ - appear -
2/8/89	Plaintiff and Defendant appear. Case continued to 3/7/89 at 1:30 A.M. at request of X Prosecuting Attorney __Defendant __Court.Produce evidence or dismiss. s/my
2/14/89	Subpoena's returned served on CPL Tucker and Mike Cooper
3/7/89	Case called. P.A. appears; Defendant appears by counsel and in person. Court finds defendant not guilty and orders that defendant be discharged.

I, J.D. Hardesty, Deputy Clerk of the Associate Court of Laclede County, Missouri hereby certify the above and foregoing to be a copy of the original testimony whereof, I have set my hand in Lebanon this 9/13/96.

"s/J.D. Hardesty"